

Code of Federal Regulations  
44 CFR § 201 and 206 RIN 3067-AD22

[Title 44, Volume 1]

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[CITE: 44CFR206]

TITLE 44--EMERGENCY MANAGEMENT AND ASSISTANCE  
CHAPTER I--FEDERAL EMERGENCY MANAGEMENT AGENCY  
PART 206--FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER  
NOVEMBER 23, 1988--Table of Contents

FEDERAL EMERGENCY MANAGEMENT AGENCY  
44 CFR Parts 201 and 206 RIN 3067-AD22 (*Excerpts*)

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: This rule addresses State mitigation planning, identifies new local mitigation planning requirements, authorizes Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. This rule also requires that repairs or construction funded by a disaster loan or grant must be carried out in accordance with applicable standards and says that FEMA may require safe land use and construction practices as a condition of grantees receiving disaster assistance under the Stafford Act.

DATES: Effective Date: February 26, 2002.

Note: A revision to Section 206.226 Restoration of damaged facilities. (b) Mitigation planning. In order to receive assistance under this section, as of November 1, 2003, the State must have a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

The full rule may be viewed at <http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WALSdocID=476028263470+0+0+0&WALSaction=retrieve>.

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[Revised as of October 1, 2000, amended as of February 26, 2002]

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Subpart N--Hazard Mitigation Grant Program

Source: 55 FR 35537, Aug. 30, 1990, unless otherwise noted.

Sec. 206.430 General.

This subpart provides guidance on the administration of hazard mitigation grants made under the provisions of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, hereafter Stafford Act, or the Act.  
[59 FR 24356, May 11, 1994]

Sec. 206.431 Definitions (amended February 26, 2002).

- (a) *Activity* means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.
- (b) *Applicant* means a State agency, local government, Indian tribal government, or eligible private nonprofit organization, submitting an application to the Governor's Authorized Representative (grantee) for assistance under the assistance under the Hazard Mitigation Grant Program (HMGP).
- (c) *Enhanced State Mitigation Plan* is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.
- (d) *Grant application* means the request to FEMA for HMGP funding, as outlined in Sec. 206.436, by a State or tribal government that will act as grantee--the initial request for section 404 funding, as outlined in Sec. 206.436.
- (e) *Grant award* means total of Federal and non-Federal contributions to complete the approved scope of work.
- (f) *Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, an Indian tribal government may choose to be a grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as a grantee will assume the responsibilities of a "state", under this subpart, for the purposes of administering the grant.
- (g) *Indian tribal government* means any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of

Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

- (h) *Local Mitigation Plan* is the hazard mitigation plan required of a local or Indian tribal government acting as a subgrantee as a condition of receiving a project subgrant under the HMGP as outlined in 44 CFR 201.6.
- (i) *Standard State Mitigation Plan* is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in Sec. 201.4.
- (j) *State Administrative Plan* for the Hazard Mitigation Grant Program means the plan developed by the State to describe the procedures for administration of the HMGP.
- (k) *Subgrant* means an award of financial assistance under a grant by a grantee to an eligible subgrantee.
- (l) *Subgrant application* means the request to the grantee for HMGP funding by the eligible subgrantee, as outlined in Sec. 206.436.
- (m) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.
- (n) *Subgrantees* can be a State agency, local government, private non-profit organizations, or Indian tribal government as outlined in Sec. 206.433. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

Sec. 206.432 Federal grant assistance, amended as of February 26, 2002\*

- (a) *General*. This section describes the extent of Federal funding available under the State's grant, as well as limitations and special procedures applicable to each.
- (b) *\*Amounts of assistance*. The total of Federal assistance under this subpart shall not exceed either 15 or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:
  - (1) Fifteen (15) percent. Effective November 1, 2003, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, approved State Mitigation Plans will be accepted.
  - (2) Twenty (20) percent. A State with an approved Enhanced State Mitigation Plan, in effect prior to the disaster declaration, which meets the requirements outlined in 44 CFR 201.5 shall be eligible for assistance under the HMGP not to exceed 20 percent of the total estimated Federal assistance described in this paragraph.
  - (3) The estimates of Federal assistance under this paragraph (b) shall be based on the Regional Director's estimate of all eligible costs, actual grants, and appropriate mission assignments.

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- (c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. The nonfederal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

### Sec. 206.433 State responsibilities.

- (a) *Grantee.* The State will be the Grantee to which funds are awarded and will be accountable for the use of those funds. There may be subgrantees within the State government.
- (b) *Priorities.* The State will determine priorities for funding. This determination must be made in conformance with Sec. 206.435.
- (c) *Hazard Mitigation Officer.* The State must appoint a Hazard Mitigation Officer, as required under 44 CFR part 206 subpart M, who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.
- (d) *Administrative plan.* The State must have an approved administrative plan for the Hazard Mitigation Grant Program in conformance with Sec. 206.437.

Section 206.434 is amended by redesignating paragraphs (b) through (g) as paragraphs (c) through (h), respectively; adding a new paragraph (b); revising redesignated paragraphs (c) introductory text and (c)(1); and revising redesignated paragraph (d) to read as follows:

### Sec. 206.434 Eligibility. Revised February 26, 2002

- (a) *Applicants.* The following are eligible to apply for the Hazard Mitigation Program Grant:
  - (1) State and local governments;
  - (2) Private non-profit organizations or institutions that own or operate a private non-profit facility as defined in Sec. 206.221(e);
  - (3) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals.
- (b) *Plan requirement.*
  - (1) For all disasters declared on or after November 1, 2003, local and tribal government applicants for subgrants, must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of subgrants.
  - (2) Regional Directors may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(c) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

- (1) Be in conformance with the State Mitigation Plan and Local Mitigation Plan approved under 44 CFR part 201;
- (2) Have a beneficial impact upon the designated disaster area, whether or not located in the designated area;
- (3) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations;
- (4) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible;
- (5) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The grantee must demonstrate this by documenting that the project:
  - (i) Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved,
  - (ii) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis,
  - (iii) Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,
  - (iv) Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,
  - (v) Considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements.

(d) *Eligible activities.*

- (1) Planning. Up to 7% of the State's HMGP grant may be used to develop State, CFR part 201.
- (2) Types of projects. Projects may be of any nature that will result in protection to public or private property. Eligible projects include, but are not limited to:
  - (i) Structural hazard control or protection projects;
  - (ii) Construction activities that will result in protection from hazards;
  - (iii) Retrofitting of facilities;
  - (iv) Property acquisition or relocation, as defined in paragraph (e) of this section;
  - (v) Development of State or local mitigation standards;
  - (vi) Development of comprehensive mitigation programs with implementation as an essential component;
  - (vii) Development or improvement of warning systems.

(e) *Property acquisition and relocation requirements.* A project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters an agreement with the FEMA Regional Director that provides assurances that:

- (1) The following restrictive covenants shall be conveyed in the deed to any property acquired, accepted, or from which structures are removed (hereafter called in section (d) the property):

- (i) The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and
  - (ii) No new structure(s) will be built on the property except as indicated below:
    - (A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;
    - (B) A rest room; or
    - (C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.
  - (iii) After completion of the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.
  - (2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, pervious parking lots, and buffer zones.
  - (3) Any structures built on the property according to paragraph (d)(1) of this section, shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
- (f) *Inapplicability of the Uniform Relocation Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to real property acquisition projects which meet the criteria identified below:
- (1) The project provides for the purchase of property damaged by the major, widespread flooding in the States of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin during 1993;
  - (2) It provides for such purchase solely as a result of such flooding;
  - (3) It is carried out by or through a State or unit of general local government;
  - (4) The purchasing agency (grantee or subgrantee) notifies all potential property owners in writing that it will not use its power of eminent domain to acquire the properties if a voluntary agreement is not reached;
  - (5) The project is being assisted with amounts made available for:
    - (i) Disaster relief by the Federal Emergency Management Agency; or
    - (ii) By other Federal financial assistance programs.
- (g) *Duplication of programs.* Section 404 funds cannot be used as a substitute or replacement fund projects or programs that are available under other Federal authorities, except under limited circumstances in which there are extraordinary threats to lives, public health or safety or improved property.
- (h) *Packaging of programs.* Section 404 funds may be packaged or used in combination with other Federal, State, local, or private funding sources when appropriate to develop a comprehensive mitigation solution, though section 404 funds cannot be used as a match for other Federal funds.

Sec. 206.435 Project identification and selection criteria. \*Revised February 26, 2002

- (a) *\*Identification.* It is the State's responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects shall be identified and prioritized through the State, Indian tribal, and local planning process.
- (b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum the criteria must be consistent with the criteria stated in Sec. 206.434(b) and include:
  - (1) Measures that best fit within an overall plan for development and/or hazard mitigation in the community, disaster area, or State;
  - (2) Measures that, if not taken, will have a severe detrimental impact on the applicant, such as potential loss of life, loss of essential services, damage to critical facilities, or economic hardship on the community;
  - (3) Measures that have the greatest potential impact on reducing future disaster losses;
- (c) *Other considerations.* In addition to the selection criteria noted above, consideration should be given to measures that are designed to accomplish multiple objectives including damage reduction, environmental enhancement, and economic recovery, when appropriate.

Sec. 206.436 Application procedures.

- (a) *General.* General. This section describes the procedures to be used by the grantee in submitting an application for HMGP funding. Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part 206. Subgrantees are accountable to the grantee.
- (b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.
- (c) *Hazard mitigation application.* Hazard mitigation application. Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its Hazard Mitigation Grant Program application to the FEMA Regional Director. The application will identify one or more mitigation measures for which funding is requested. The application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs, if appropriate, and a narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure shall include the following:
  - (1) Name of the subgrantee, if any;
  - (2) State or local contact for the measure;
  - (3) Location of the project;
  - (4) Description of the measure;

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- (5) Cost estimate for the measure;
  - (6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with Sec. 206.434(c);
  - (7) Work schedule;
  - (8) Justification for selection;
  - (9) Alternatives considered;
  - (10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations.
- (d) *Application submission time limit.* The State's application may be amended as the State identifies and selects local project applications to be funded. The State must submit all local HMGP applications and funding requests for the purpose of identifying new projects to the Regional Director within 12 months of the date of disaster declaration.
- (e) *Extensions.* The State may request the Regional Director to extend the application time limit by 30 to 90 day increments, not to exceed a total of 180 days. The grantee must include a justification in its request.
- (f) *FEMA approval.* The application and supplement(s) will be submitted to the FEMA Regional Director for approval. FEMA has final approval authority for funding of all projects.
- (g) *Indian tribal grantees.* Indian tribal governments may submit a SF 424 directly to the Regional Director.

### Sec. 206.437 State administrative plan.

- (a) *General.* The State shall develop a plan for the administration of the Hazard Mitigation Grant Program.
- (b) *Minimum criteria.* At a minimum, the State administrative plan must include the items listed below:
- (1) Designation of the State agency will have responsibility for program administration;
  - (2) Identification of the State Hazard Mitigation Officer responsible for all matters related to the Hazard Mitigation Grant Program.
  - (3) Determination of staffing requirements and sources of staff necessary for administration of the program;
  - (4) Establishment of procedures to:
    - (i) Identify and notify potential applicants (subgrantees) of the availability of the program;
    - (ii) Ensure that potential applicants are provided information on the application process, program eligibility and key deadlines;
    - (iii) Determine applicant eligibility;
    - (iv) Conduct environmental and floodplain management reviews;
    - (v) Establish priorities for selection of mitigation projects;
    - (vi) Process requests for advances of funds and reimbursement;
    - (vii) Monitor and evaluate the progress and completion of the selected projects;
    - (viii) Review and approve cost overruns



- (ix) Process appeals;
  - (x) Provide technical assistance as required to subgrantee(s);
  - (xi) Comply with the administrative requirements of 44 CFR parts 13 and 206;
  - (xii) Comply with audit requirements of 44 CFR part 14;
  - (xiii) Provide quarterly progress reports to the Regional Director on approved projects.
- (c) *Format.* The administrative plan is intended to be a brief but substantive plan documenting the State's process for the administration of the Hazard Mitigation Grant Program and management of the section 404 funds. This administrative plan should become a part of the State's overall emergency response or operations plan as a separate annex or chapter.
- (d) *Approval.* The State must submit the administrative plan to the Regional Director for approval. Following each major disaster declaration, the State shall prepare any updates, amendments, or plan revisions required to meet current policy guidance or changes in the administration of the Hazard Mitigation Grant Program. Funds shall not be awarded until the State administrative plan is approved by the FEMA Regional Director.

Sec. 206.438 Project management.

- (a) *General.* The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 44 CFR part 13. The State is responsible for ensuring that subgrantees meet all program and administrative requirements.
- (b) *Cost overruns.* During the execution of work on an approved mitigation measure the Governor's Authorized Representative may find that actual project costs are exceeding the approved estimates. Cost overruns which can be met without additional Federal funds, or which can be met by offsetting cost underruns on other projects, need not be submitted to the Regional Director for approval, so long as the full scope of work on all affected projects can still be met. For cost overruns which exceed Federal obligated funds and which require additional Federal funds, the Governor's Authorized Representative shall evaluate each cost overrun and shall submit a request with a recommendation to the Regional Director for a determination. The applicant's justification for additional costs and other pertinent material shall accompany the request. The Regional Director shall notify the Governor's Authorized Representative in writing of the determination and process a supplement, if necessary. All requests that are not justified shall be denied by the Governor's Authorized Representative. In no case will the total amount obligated to the State exceed the funding limits set forth in Sec. 206.432(b). Any such problems or circumstances affecting project costs shall be identified through the quarterly progress reports required in paragraph (c) of this section.
- (c) *Progress reports.* The grantee shall submit a quarterly progress report to FEMA indicating the status and completion date for each measure funded. Any problems or circumstances affecting completion dates, scope of work, or project costs which are expected to result in noncompliance with the approved grant conditions shall be described in the report.

- (d) *Payment of claims.* The Governor's Authorized Representative shall make a claim to the Regional Director for reimbursement of allowable costs for each approved measure. In submitting such claims the Governor's Authorized Representative shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement. The Regional Director shall determine the eligible amount of reimbursement for each claim and approve payment. If a mitigation measure is not completed, and there is not adequate justification for non-completion, no Federal funding will be provided for that measure.
- (e) *Audit requirements.* Uniform audit requirements as set forth in 44 CFR part 14 apply to all grant assistance provided under this subpart. FEMA may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

Sec. 206.439 Allowable costs.

- (a) *General.* General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.
- (b) *Eligible direct costs.* The eligible direct costs for administration and management of the program are divided into the following two categories.
  - (1) Statutory administrative costs—
    - (i) Grantee. Pursuant to 406(f)(2) of the Stafford Act, an allowance will be provided to the State to cover the extraordinary costs incurred by the State for preparation of applications, quarterly reports, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. The allowance will be based on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under section 404 of the Stafford Act:
      - (A) For the first \$100,000 of total assistance provided (Federal share), three percent of such assistance.
      - (B) For the next \$900,000, two percent of such assistance.
      - (C) For the next \$4,000,000, one percent of such assistance.
      - (D) For assistance over \$5,000,000, one-half percent of such assistance.
    - (ii) Subgrantee. Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of total net eligible costs under section 404 of the Stafford Act, for an individual applicant (applicants in this context include State agencies):
      - (A) For the first \$100,000 of net eligible costs, three percent of such costs.
      - (B) For the next \$900,000, two percent of such costs.
      - (C) For the next \$4,000,000, one percent of such costs.
      - (D) For those costs over \$5,000,000, one-half percent of such costs.
  - (2) State management costs—
    - (i) Grantee. Except for the items listed in paragraph (b)(1)(i) of this section, other administration costs shall be paid in accordance with 44 CFR 13.22. Costs of State personnel (regular time salaries only) assigned to administer the Hazard Mitigation Grant Program may be eligible when approved by the Regional

Director. Such costs shall be shared in accordance with the cost share provisions of section 404 of the Act. For grantee administrative costs in the Disaster Field Office, the State shall submit a plan for the staffing of the Disaster Field Office within 5 days of the opening of the office. This staffing plan shall be in accordance with the administrative plan requirements of Sec. 206.437. After the close of the Disaster Field Office, costs of State personnel (regular time salaries only) for continuing management of the hazard mitigation grants may be eligible when approved in advance by the Regional Director. The State shall submit a plan for such staffing in advance of the requirement.

(c) *Eligible indirect costs—*

- (1) Grantee. Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular A-87.
- (2) Subgrantee. No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (b)(1)(ii) of this section necessary costs of requesting, obtaining and administering Federal assistance.